

Washington, DC -- Congresswoman Linda Sánchez, chairwoman of the Judiciary Committee's Subcommittee on Commercial and Administrative Law (CAL), issued the following statement today at the subcommittee's hearing on the politicization of the Department of Justice and allegations of selective prosecution. Former Deputy White House Chief of Staff Karl Rove did not appear at the hearing despite a congressional subpoena requesting his testimony.

"According to letters we have received from his counsel, former Presidential Advisor Karl Rove has refused to appear today to answer questions in accordance with his obligations under the subpoena served on him, based on claims that "Executive Privilege confers upon him immunity" from even appearing to testify.

"I am extremely disappointed and deeply concerned that Mr. Karl Rove has chosen to forego this opportunity to give his account of the politicization of the U.S. Department of Justice, including allegations regarding the prosecution of former Governor Don Siegelman.

"I have given Mr. Rove's written claims careful consideration, and I hereby rule that those claims are not legally valid, and that Mr. Rove is required pursuant to the subpoena to be here now and to answer questions.

"I will presently entertain a motion to sustain that ruling, the grounds for which are set forth in writing and have been distributed to all members, but first I want to summarize the grounds for that ruling as follows:

"First, the claims are not properly asserted. When a private party like Mr. Rove is subpoenaed by Congress and the Executive Branch objects on privilege grounds, the private party is obligated to respect the subpoena and the Executive Branch should go to court or otherwise pursue its privilege objection.

"That is what happened in the AT & T case, and what should have happened here. But we have not received a statement from the President, or anyone at the White House, directly asserting these privilege and immunity claims to us.

"Second, we are unaware of any proper legal basis for Mr. Rove's refusal even to appear today as required by subpoena. The courts have made clear that no one, not even the President, is immune from compulsory process. That is what the Supreme Court ruled in U.S. v. Nixon and in Clinton v. Jones.

"Neither Mr. Rove's lawyer nor the White House has cited a single court decision to support the immunity claim as to former White House officials.

"The proper course of action is for Mr. Rove to attend the hearing pursuant to subpoena, at which time any specific assertions of privilege can be considered on a question-by-question basis. As the Supreme Court explained more than a century ago, "[n]o man in this country is so high that he is above the law," and "[a]ll the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it."

“Third, the claims of absolute immunity directly contradict the conduct of this and past Administrations with respect to White House officials appearing before Congress. Only recently, current Vice-Presidential chief of staff David Addington testified before the House Judiciary Committee pursuant to subpoena, and former White House Press Secretary Scott McClellan testified without even receiving a subpoena.

“In 2007, former White House officials Sara Taylor and Scott Jennings testified concerning the U.S. Attorney firings before the Senate Judiciary Committee pursuant to subpoena. Prior to this Administration, a CRS study shows that both present and former White House officials have testified before Congress at least 74 times since World War II.

“Fourth, the claims of absolute immunity and the refusal to appear pursuant to subpoena and to answer questions directly contradict the behavior of Mr. Rove and his attorney themselves.

“When Mr. Rove’s attorney was asked earlier this year by a media representative whether Mr. Rove would testify before Congress in response to a subpoena on the Siegelman matter, he responded “sure” by e-mail.

“In addition, unlike Harriet Miers, Mr. Rove has spoken extensively in the media on the very subject the Subcommittee seeks to question him about: his role in the alleged politicization of the Justice Department, including the Siegelman case and the unprecedented firing of nine U.S. Attorneys in 2006.

“Fifth, and finally, especially to the extent that Executive Privilege is the basis for the claims of immunity as to Mr. Rove, the White House has failed to demonstrate that the information we are seeking from him under the subpoena is covered by that privilege.

“The courts have made clear that Executive Privilege applies only to discussions involving the President and to communications from or to presidential advisers “in the course of preparing advice for the President.” But the White House has maintained that the President never received any advice on, and was not himself involved in, the U.S. Attorney firings and related events.

“The presidential communications privilege simply does not come into play here at all.

“For all the foregoing reasons, as stated more fully in my written ruling, I hereby rule that Mr. Rove’s claims of immunity are not legally valid, and his refusal to comply with the subpoena and appear at this hearing to answer questions cannot be properly justified.

“These reasons are without prejudice to one another and to any other defects that may, after further examination, be found to exist in the asserted claims.”